Supreme Court, U.S.
FILED
APR 13 1971
E. ROBERT SEAVER, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

APRIL 1971 TERM

1604

NO. [redacted]

JAMES T. FRANKLIN,

Petitioner-Appellant

Ill. Appellate Court 1st District No. 52659
Cook County Circuit Court 61-C4763
Supreme Ct. - 43226

against -

GROSSINGER MOTOR SALES, INC.

Respondent-Appellee

PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT ON APPEAL FROM THE APPELLATE COURT, 1ST DISTRICT OF ILLINOIS FOR CIRCUIT COURT OF COOK COUNTY

Petitioner Appellant

JAMES T. FRANKLIN
2524 W. Cortez St.,
Chicago, Illinois
60622

Pro Se

JOHN F. McCLURE
120 S. LaSalle St.,
Chicago, Illinois
60603

Counsel for
Defendant Appellee

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AUTHORITIES

150 A.L.R. 879	Appendix B 10 B
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IN THE

SUPREME COURT OF THE UNITED STATES

APRIL 1971 TERM

NO. Misc.

JAMES T. FRANKLIN

Petitioner-Appellant

Ill. Appellate Court 1st District No. 52659
Cook County Circuit Court No. 61C4763
Supreme Court 43226

-against-

GROSSINGER MOTOR SALES, INC.

Respondent-Appellee

PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT ON APPEAL FROM THE APPELLATE COURT, 1st DISTRICT OF ILLINOIS FOR CIRCUIT COURT OF COOK COUNTY

CASE NO. 52659 - 61C4763

Petitioner JAMES T. FRANKLIN, prays for a writ of certiorari issue to review the order of the Appellate Court of the First District of Illinois Case No. 52659 entered March 20, 1970. Rehearing Petition denied April 22, 1970 - See Appendix A Illinois Supreme Court denied hearing. Last Motion denied January 14, 1971. See Exhibit D

OPINION BELOW

Circuit Court of Cook County 61-C4763 directed verdict for defendant March 23, 1967 denying damages for illegal judgement See Exhibit A

Abuse of process upheld by denial of Appeal to Illinois Court of Appeals, 1st District of Illinois, Case No. 52659 by finding for defendant two to one, March 20, 1970. Rehearing denied April 22, 1970 because of volume. See Appendix A

Illinoix Supreme Court No. 43226
Petition for leave to appeal denied by Illinois Supreme Court Oct. 5, 1970. See Exhibit B

Motion for reconsideration of Petition for leave to appeal denied by Illinois Supreme Court Nov. 12, 1970. See Exhibit C

Motion for hearing as a matter of Right Pro Se denied Jan. 14, 1971. See Exhibit D

Court's Jurisdiction Invoked Under ...

U.S.C. 28 (SUP) 2101 (c)
U.S.C. 28 (SUP) 2104
U.S.C. 28 (SUP) 2106

For Rules verbatim, see page 5

U.S. Constitution Article VI
U.S. Constitution Amendment XIV

For Rules verbatim, see page 5

QUESTIONS PRESENTED

I

Under U.S. Constitution: Amendment IV

The unreasonable seizure of property (car) and life (job) and liberty (credit) denied my right to be secure in papers and possessions from illegal judgment with no redress: (Directed Verdict).

II

Under U. S. Constitution Amendment V

The Appellate Court decision stated a reluctance of Illinois courts to rule against abuse of process on very strange grounds thereby denying redress under due process of law.
See Appendix A 1st Paragraph, Page 5a

III

Under U. S. Constitution Amendment VII

The directed verdict in trial court denied my right to a jury trial.

The testimony and facts should have been decided by the jury. See Exhibit A

DAMAGES ASKED

For loss of job	$ 50,000
For loss of credit	$ 50,000
For mental anguish	$ 50,000
For defamation of character	$ 50,000
For punitive damages	$500,000

SUBSTANTIALITY OF ISSUES

The facts of this case are presented in the appellate decision which is appended .....as Appendix A

Reasons for granting the writ

I The jury's right to a determination of the facts of this case was denied by a directed verdict. See Appendix B , Page 4 to 9 "Facts Relevant to the Appeal"

II The statement by the Appellate majority: "Action for malicious prosecution of a civil proceeding is not favored by the courts of this state on the basic ground that courts should be open to litigants for settlement of their rights without fear of prosecution for calling upon the courts todetermine such rights" was shocking in view of an illegal judgment with subsequent garnishment and loss of job. My return to work invalidates any other reason. See Exhibit F and G.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted to me with the damages as set forth.

Respectfully submitted

Plaintiff Petitioner

James T. Franklin

JAMES T. FRANKLIN
2524 W. Cortez St.,
Chicago, Illinois 60622

JOHN F. McClure

120 So. LaSalle St.,
Chicago, Illinois 60603

Attorney for

Defendant
Appellee

Case No. 61C4763 Cook County Circuit Court
Appellate Court 1st District #52659
Illinois Supreme Court #43226

U.S.C. 28 (Sup) 2101 (c)

A writ of certiorari to bring a judgment for review before the Supreme Court shall be taken or applied for within ninety days after the entry of such judgment or decree.

U.S.C. 28 (Sup) 2106

An appeal to the Supreme Court from a state court shall be taken in the same manner and under the same regulations, and shall have the same effect as if the judgment or decree appealed from had been rendered in a court of the United States.

U.S.C. 28 (Sup) 2104

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

U.S. CONSTITUTION CITED VERBATIM

ARTICLE VI

The Constitution, and the laws of the United States which shall be made in pursuance thereof; shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

AMENDMENT XIV

Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within it's jurisdiction the equal protection of the laws.

CONSTITUTIONAL AMENDMENTS CITED

IV, V, VII

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

James I. Franklin v Bloomington Motor Sales, Inc. General No. 61 C 4763

The defendant having moved the court at the close of the plaintiff's evidence and after the plaintiff rested and before any other proceedings in said cause to direct a verdict in favor of the defendant

It is ordered that verdict be entered finding the defendant not guilty

Enter: [signature]
Judge
JUDGE DANIEL J. McNAMARA

MAR 23 1967

CIRCUIT COURT

Name Attorney for Defendant
Address 120 S. LaSalle 67L13 363
City Chicago
Telephone CE 6-3985

JOSEPH J. McDONOUGH,
CLERK OF THE CIRCUIT COURT OF COOK COUNTY

365

Exhibit A

STATE OF ILLINOIS

OFFICE OF

CLERK OF THE SUPREME COURT

SPRINGFIELD

62706

JUSTIN TAFT
CLERK

TELEPHONE
AREA CODE 217
525-2035

October 5, 1970

Kreisman & Epstein
Attorneys at Law
105 W. Adams St.
Chicago, Ill. 60603

No. 43226 - James T. Franklin, petitioner, vs. Grossinger Motor Sales, Inc., respondent. Appellate Court, First District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

Clerk of the Supreme Court

10

Exhibit B

STATE OF ILLINOIS

OFFICE OF

CLERK OF THE SUPREME COURT

SPRINGFIELD

62706

JUSTIN TAFT
CLERK

TELEPHONE
AREA CODE 217
525-2035

November 12, 1970

Mr. James T. Franklin
859 N. Marshfield Avenue
Chicago, Illinois 60622

Dear Mr. Franklin:

In Supreme Court today, in case No.43226

entitled: James T. Franklin,
petitioner

vs.

Grossinger Motor Sales, Inc.,
respondent

motion by petitioner for reconsideration of the order denying petition for leave to appeal was denied.

Very truly yours,

Clerk of the Supreme Court

Exhibit C

STATE OF ILLINOIS

OFFICE OF

CLERK OF THE SUPREME COURT

SPRINGFIELD

62706

JUSTIN TAFT
CLERK

TELEPHONE
AREA CODE 217
525-2035

January 14, 1971

Mr. James T. Franklin
859 N. Marshfield Avenue
Chicago, Illinois 60622

Dear Mr. Franklin:

In Supreme Court today, in case No. 43226

entitled: James T. Franklin,
petitioner

vs.

Grossinger Motor Sales, Inc.,
respondent

motion by petitioner, pro se, for hearing as a matter of right on constitutional ground was denied.

Very truly yours,

Clerk of the Supreme Court

Exhibit D

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

JAMES T. FRANKLIN

vs.

GROSSINGER MOTOR SALES, INC.

General No. 61 C 4763

Defendant hereby demands a jury trial.

Attorney for Defendant

EPSTEIN, WILSEY & KIRSH

Attorney

Chicago.....A. D. 195.....

State of Illinois, }
County of Cook. } ss.

I, MATTHEW J. DANAHER, Clerk of the Circuit Court of Cook County, and the keeper of records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain Jury Demand filed in this office on the 5 day of May 1961

in a certain cause Gately pending in said Court, on the East side thereof, between James T. Franklin Plaintiff, and Grossinger Motor Sales, Inc. Defendant.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, in said County, this 11 day of February 1971

Matthew J. Danaher Clerk.

Exhibit E

Just Agree to Replace w/ Same Trade - Ed thru INS.

Conditional Bill of Sale

GROSSINGER MOTOR SALES, INC.

2650 LAWRENCE AVENUE

Chicago 25, Illinois — LOngbeach 1-6700

AL Teller

The credit statement executed by the purchaser of the within automobile simultaneously herewith is a part of the sale herein consummated. Should said credit statement contain any falsehoods or misrepresentations, this sale shall be void at the option of the seller or its assignees, and seller or its assignees shall have the right to repossess the within automobile. Verbal agreements not recognized.

DOWN PAYMENT NOT REFUNDABLE — DEPOSIT NOT REFUNDABLE — TRADE IN NOT RETURNABLE

NO PUBLIC LIABILITY INSURANCE Issued With This Transaction

Purchaser James Franklin Date of Sale 10-1-60

1338 W Huron

Phone N.P. Cash

SALESMAN	YEAR	MAKE	BODY STYLE	IDENTIFICATION NUMBER	LINE NO.	COLOR
B/B	60	Int	Pan.	K60P5728	1106	Red

TRADE-IN

Make of Car G.M.C. Year 58

Body Style P.U. Body No. T106031

Allowance $3000.-

Less Amount Owing Mere $2600.-

Net Allowance $400.-

Cash Worth ..... $.....

TERMS

CASH PRICE ..... Paid ..... $.....

Sales Tax $47.50

Total Price ..... $.....

Previous Deposit ..... $.....

Cash on Delivery $500.-

Note Due By ..... $.....

Net Trade Allowance $400.-

Total Credit $900.- 100.-

Unpaid Balance $3010.-

I Hereby Acknowledge the receipt of the following items: (1) Copy of Bill of Sale and Completed Conditional Sales Contract. (2) Certificate of Title.

I have read my contract and understand my payments and charges in full. I have returned title to seller for the purpose of recording lien with Finance Company.

Purchaser's Signature X James F. Franklin

Which is secured by Conditional Sales Contract and Judgement Note including charges and insurance, if any, as agreed upon and authorized by Purchaser.

No use tax included in this transaction. By:.....

This was not an advertised car. By:.....

Notes and Conditional Sales Contract held by GROSSINGER MOTOR SALES, INC.	One Payment of	Weekly Payments of	One Payment of
Or Assignee, Payable as follows:	$..... Due .....196...	$..... Starting .....196....	$..... Due .....196...
And 24 Payments of $ 113.80 Each Month Starting 11-12-60			And a Final Payment of .....

NOTARY SEAL

The purchaser represents and warrants that he is of legal age; that he has title to and good right to sell and dispose of the used car traded in, described above, that there are no liens, claims and/or encumbrances thereon, and agrees to furnish good and sufficient title and hereby grants the above company power of attorney to assign and endorse said title for him. The above automobile sold to purchaser is a used car on which there is no warranty, either as to mechanical condition, equipment, previous use, year and model, unless specifically set forth in writing by an authorized representative of the above company.

Carl Grossinger

After careful inspection and demonstration, the undersigned purchases the above automobile with equipment at the price and on the terms specified above, as is and shown, and agrees not to demand or expect any equipment, parts, supplies, labor, services or rebates, for any reason whatsoever, and that no agreement other than herein written shall be valid.

In the event of out of state sales, title to the above described vehicle shall remain in the seller, until said title is endorsed to and received by the purchaser through the U. S. mails.

GROSSINGER MOTOR SALES, INC.

.....

Transfer of title to above automobile is subject to final payment of any and all checks clearing bank upon which drawn.

THIS STATEMENT IS TO VERIFY THAT ALL IDENTIFYING NUMBERS CONTAINED IN THIS BILL OF SALE AGREE WITH THOSE ON THE CERTIFICATE OF TITLE OR MANUFACTURER'S STATEMENT OF ORIGIN.

I, THE PURCHASER, HAVE BEEN EXPLAINED THE FULL CONTENTS OF THIS CONTRACT, WHICH HAS BEEN FILLED OUT BEFORE I SIGNED IT, AND HAVE RECEIVED A COPY OF THIS CONTRACT UPON THE DELIVERY OF THE ABOVE-DESCRIBED AUTOMOBILE.

....RIDER....

In consideration of the immediate delivery to purchaser of automobile, purchaser agrees to provide an acceptable co-signer, if necessary, within two days of above date. In the event of the failure of the purchaser to obtain an acceptable co-signer on said note, purchaser agrees to either pay the unpaid balance of said note immediately, or return automobile in his possession immediately, and to permit seller to retain deposit, down payment and trade-in not as penalty but as liquidated damages.

I approve and accept the above terms:

Purchaser X James F. Franklin

Form 3, Tem-O-Pad Corp., 6104 West North Avenue, Chicago 39, Illinois, NAtional 2-5272

Superior Court of Chicago, Case No.

60M43729, in the sum of $1,357.50 and costs.

Exhibit F

pltf Exhr. 3 f'rid 3/21/67

WAGE DEMAND IN GARNISHMENT Oct. 19, 1960

Modern Law Forms
No. 118-C

Peer Cartage Co., Inc. (Ill. Corp.)
c/o Geo. J. Pyre
1900 W. Fullerton
Chicago, Ill.
Employer

10-20 Got Demand

The within demand is based upon:

A judgment obtained in the Municipal Court of Chicago
Entered: OCT 18 1960 19
Case No. 60M43729

Demand is herewith made upon you that you withhold the sum of $ 1382.25 from the non-exempt compensation for services in employment due the Judgment Debtor named below at the time of the service of the within demand and thereafter, and to be held by you subject to garnishment summons hereafter served upon you..

GROSSINGER MOTOR SALES, INC.
Judgment Creditor

By: _____
Agent

A. J. ZENOFF
THEIR ATTORNEY
110 S. DEARBORN ST., CHICAGO 3, ILL.
FRANKLIN 2-5700
Attorney for Creditor

James T. Franklin
1338 W. Huron
Chicago 22, Ill.
Judgment Debtor
(Employee)

321 - 1-5-60

2650 Lawrence Ave.
Chicago, Ill.
Address of Creditor

Exhibit G